

September 9, 2003

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*Re: In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony  
Services are Exempt from Access Charges, WC Docket No. 02-361*

Dear Ms. Dortch:

This letter responds to an ex parte filing submitted by Verizon in the above-referenced docket on August 12, 2003.

Verizon's letter does not address the issue in this proceeding -- the appropriate way to categorize Voice Over Internet Protocol ("VOIP") services for purposes of assessing intercarrier charges -- except falsely to assert that it has "long been clear" that the position advocated by AT&T so lacks merit that companies that take a different view from Verizon are engaged in a "scheme of deception." Verizon instead uses this docket as a pretext to further its efforts to damage MCI, one of its principal competitors.

In its letter, Verizon asserts that a provider named DataVoN's reliance on the regulatory position advocated by AT&T in its petition amounts to fraud, and asserts that by agreeing to have VOIP providers terminate some of its traffic, MCI too has "engage[d] in deception."

Verizon is wrong. VOIP providers that claim they are entitled to pass Internet-based voice traffic through local facilities without being subject to access charges are taking a defensible position on an issue that is currently pending before the FCC in this docket. Verizon's assertion that parties that do not happen to agree with it on matters pending before the FCC are little more than criminals is an abuse of the ex parte process that should not be tolerated.<sup>1</sup> Notably, it made no such claims against AT&T or MCI at earlier stages of this proceeding, though it has long been aware of the DataVoN documents that it now makes public through this docket.

The truth is that Verizon is complaining about a widespread industry practice that is a marketplace response to an irrational and unsustainable intercarrier compensation regime. In

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<sup>1</sup> Indeed, it appears that Verizon made its filing in this docket because it wished to release confidential documents that it obtained in the DataVoN bankruptcy proceedings, which could be released only by order in another legal proceeding. See n. 1 of Verizon's Ex Parte. It has evidently made a filing in this docket solely as a pretext to publicly release the confidential DataVoN documents.

fact, Verizon's affiliate, Verizon Wireless, is involved in the same "deception" it accuses MCI of engaging in, and MCI is often the "victim" of intercarrier compensation arbitrage opportunities undertaken by other carriers such as Verizon, to terminate VOIP traffic on MCI's local network.

Indeed, MCI recently has found itself in a similar position to Verizon – with traffic that originated in a different LATA terminated onto its local network by a provider who claims to be a VOIP provider entitled to use local interconnection to hand off that traffic. MCI then must pay termination charges to deliver the traffic to the terminating customer's local carrier. And just as Verizon claims to have found that some of that kind of traffic at one point passed through MCI's network, so MCI has found that some of the VOIP traffic that winds up on *its* local network comes from Verizon Wireless, Cingular (SBC and BellSouth), and AT&T Wireless customers.

Specifically, MCI has found that one of its customers named Unipoint that claims to be a VOIP provider is terminating on MCI's local network intra- and interstate long-distance calls originated by customers of AT&T Wireless, Verizon Wireless, Cingular and other carriers. As a result, MCI is left to deliver the traffic to the called party's local carrier and pay all terminating charges. In other words, Unipoint is a "least cost router" used either directly or indirectly by Verizon Wireless, as well as other carriers that are busy attacking MCI, to engage in exactly the same kind of conduct that forms the basis of Verizon's attacks on MCI. In fact, over a recent two-day period in which MCI sampled this traffic, hundreds of thousands of such long-distance calls from different carriers were delivered by Unipoint in this manner onto MCI's local network. And as Verizon well knows, Unipoint is hardly the only other provider facilitating such arbitrage opportunities.<sup>2</sup> Indeed, MCI has found that AT&T acts as its own "least-cost router," directly terminating onto MCI's local network AT&T long distance traffic destined for customers of other local carriers.<sup>3</sup> If there is a problem with such practices, it is plainly an industry problem, and not an MCI problem.

Under the circumstances, the tenor of these carriers' advocacy against MCI on this point is at best disingenuous, and is completely unacceptable.

In a similar vein, Verizon treats the absence of Automatic Numbering Information ("ANI") or Calling Party Number ("CPN") as if it were proof of a crime. It is not. Nor, again, is this exclusively an MCI issue. It is an industry issue. Most of the sampled traffic MCI's local network received from Verizon Wireless, Cingular, AT&T Wireless and others through Unipoint came to MCI without any CPN. Indeed, a significant percentage of traffic that MCI receives

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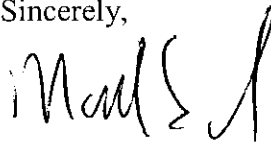
<sup>2</sup> For example, another provider, CNM Networks, states on its website that it is a VOIP provider that "currently serves thousands of customers including three of the top five largest telecommunications service providers in the world and five of the top seven prepaid card resellers. CNM wholesales its origination and termination services to leading LECs, carriers, ISPs and ISVs." (<http://www.cnmnetworks.com/customers/index.html>).

<sup>3</sup> As reported in the Wall Street Journal on September 3 (at A3), MCI has also discovered that AT&T uses an elaborate least-cost routing scheme to obtain savings on intrastate Alaska calls.

from carriers like Verizon *directly* has no numbering information attached to it in the first place for completely legitimate and commonplace reasons, such as that it originated from business clients with PBX systems that are not configured to generate CPN. *See* 47 C.F.R. § 64.1601(d) (listing examples in which CPN passing rules do not apply). And while FCC regulations specify that interexchange carriers using SS7 functionality are required to pass CPN, 47 C.F.R. §64.1601, some traffic is not passed using SS7 signaling. For example, the Internet Protocol utilized by VOIP providers may not use SS7. In these situations the absence of SS7 signaling violates no rule. If Verizon wants to propose a change in industry practice or Commission regulation, it is certainly free to do so. But it should not make allegations of misconduct based on lawful and entirely common industry practices which affect Verizon's traffic just as they do MCI's.

Verizon well understands the way the telephone network operates. It knows that the arbitrage it complains of is an industry practice, not exclusively an MCI practice. If Verizon has something useful to add to the docket through the ex parte process, it is free to do so. If it wants to propose changes to industry practices, those issues currently are under discussion in the Intercarrier Compensation docket, and Verizon is free to make such proposals there. But it should not be free to abuse this Commission's processes to make false accusations against MCI.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Schneider", with a stylized flourish at the end.

Mark D. Schneider